



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2016–N171]; [FXES11120100000–167–FF01E00000]

**Proposed Habitat Conservation Plan and Draft Environmental Assessment for
Streaked Horned Lark; Port of Portland Properties, Portland, Oregon**

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of availability; notice of permit application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an incidental take permit application from the Port of Portland pursuant to the Endangered Species Act of 1973, as amended (ESA). The requested permit would authorize the take of the streaked horned lark. The permit application includes a proposed habitat conservation plan (HCP) that describes the activities that would result in the incidental taking, and the measures the applicant will take to minimize and mitigate for the potential adverse impacts to streaked horned larks. We also announce the availability of a draft environmental assessment (EA) that has been prepared to evaluate the permit application in accordance

with the requirements of the National Environmental Policy Act of 1969 (NEPA). We are making the permit application package, including the HCP, and draft EA available for public review and comment.

DATES: To ensure consideration, written comments must be received from interested parties no later than **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the “Port of Portland HCP.”

- *Internet:* Documents may be viewed on the Internet at <http://www.fws.gov/oregonfwo/>
- *Email:* PDXHCPcomments@fws.gov. Include “Port of Portland HCP” in the subject line of the message or comments.
- *U.S. Mail:* State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service; 2600 SE 98th Avenue, Suite 100; Portland, OR 97266.
- *Fax:* 503–231–6195, Attn: Port of Portland HCP.
- *In-Person Drop-off, Viewing, or Pickup:* Comments and materials received will be available for public inspection, by appointment (necessary for viewing or picking up documents only), during normal business hours at the Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service; 2600 SE 98th Avenue, Suite 100; Portland, OR 97266; telephone 503–231–6179. Written comments can be dropped off during regular

business hours at the above address on or before the closing date of the public comment period (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Richard Szlemp, U.S. Fish and Wildlife Service (see **ADDRESSES**); telephone: 503–231–6179; facsimile: 503–231–6195. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We have received an incidental take permit application from the Port of Portland pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; ESA). The requested permit would authorize the take of the streaked horned lark (*Eremophila alpestris strigata*). The permit application includes a proposed habitat conservation plan (HCP) that describes the activities that would result in the incidental taking, and the measures the applicant will take to minimize and mitigate for the potential adverse impacts to streaked horned larks. We also announce the availability of a draft environmental assessment (EA) that has been prepared to evaluate the permit application in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.; NEPA). We are making the permit application package, including the HCP, and draft EA available for public review and comment.

Background

Section 9 of the ESA prohibits the take of fish and wildlife species listed as

endangered or threatened under section 4 of the ESA. Under the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term “harm,” as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term “harass” is defined in our regulations as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Under specified circumstances, we may issue permits that authorize take of federally listed species, provided the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for threatened species are at 50 CFR 17.32. Section 10(a)(1)(B) of the ESA contains provisions for issuing such incidental take permits to non-Federal entities for the take of federally listed species, provided the following criteria are met:

- (1) The taking will be incidental;
- (2) The applicant will prepare a conservation plan that, to the maximum extent practicable, identifies the steps the applicant will take to minimize and mitigate the impact of such taking;
- (3) The applicant will ensure that adequate funding for the plan will be provided;
- (4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(5) The applicant will carry out any other measures that we may require as being necessary or appropriate for the purposes of the plan

We listed the streaked horned lark as a threatened species on October 3, 2013 (78 FR 61452), with critical habitat, and established a special rule under section 4(d) of the ESA to exempt certain airport maintenance activities and operations, agricultural activities, and noxious weed control activities from the take prohibitions of the ESA. Historically, nesting habitat was found on western Oregon prairies, and on sandy beaches and spits along the Columbia and Willamette Rivers. Today, the streaked horned lark nests in a broad range of habitats, including native prairies, coastal dunes, fallow and active agricultural fields, wetland mudflats, sparsely vegetated edges of grass fields, recently planted Christmas tree farms with extensive bare ground, fields denuded by overwintering Canada geese, gravel roads or gravel shoulders of lightly traveled roads, airports, and dredge deposition sites in the lower Columbia River. Wintering streaked horned larks use habitats that are very similar to breeding habitats.

Proposed Action

We propose to approve the HCP and to issue a permit with a term of 30 years to the Port of Portland for incidental take of streaked horned larks caused by covered activities, if permit issuance criteria are met. The Port of Portland owns and manages lands occupied by nesting and wintering streaked horned larks, including undeveloped lands within the Rivergate Industrial District (Rivergate) and at the Portland International Airport (PDX), including the PDX Intermediate Zone and Southwest Quadrant (SW Quad), collectively, the project areas. Incidental take of up to a total of 46 streaked

horned lark nesting pairs over a 30-year permit term may occur. Incidental take would be associated with future commercial and industrial land development within the project areas, as well as aviation wildlife hazard management activities within the PDX Intermediate Zone and SW Quad. The Port of Portland would create the Sandy Island Conservation Area to mitigate for the anticipated take of streaked horned lark.

The Rivergate Project Area is located within the Rivergate Industrial District in Portland, Oregon, on the peninsula in north Portland bordered by the Columbia River, the Willamette River, and their confluence. The Rivergate Industrial District is Portland's largest industrial park, including 2,800 acres of warehousing, distribution, manufacturing, and processing facilities. The land itself was created or improved for development by the Port with the placement of fill material (mostly sandy dredged material) to elevate building sites to the surrounding grade and provide a substrate suitable for development. The Rivergate Project Area consists of approximately 120.5 acres across six undeveloped parcels that are scattered among other developed parcels within the industrial district, of which approximately 40.7 acres is considered suitable habitat for the streaked horned lark. The Rivergate parcels are bordered by roads, rail lines, parking lots, industrial buildings, and the Columbia Slough.

The creation of suitable habitat for streaked horned larks at Rivergate was an unintended consequence of the development of the Rivergate Industrial Park and the Port of Portland's ongoing use and maintenance of the site. The Port of Portland's preparation of building sites within the Rivergate Industrial Park, including the parcels of the Rivergate Project Area, created large open areas with exposed soils that have proved to be attractive to the streaked horned lark. These conditions have been largely maintained

by routine site management, such as occasional mowing and discing, to keep parcels ready for development and to generally reduce seasonal fire hazards within the industrial district. This site is planned to be developed for industrial use within one to two years. Most of the Port of Portland's aviation wildlife hazard management activities occur within the 4,867-acre PDX Intermediate Zone comprising:

- The area within the airfield perimeter fence, a 300-foot buffer around the perimeter fence, and runway protection zones (together, the Primary Zone); and
- Port of Portland owned airport land outside of the Primary Zone, much of which is under the approach or transitional surfaces of the runways.

Land management decisions within the Primary Zone are subject to the single dedicated land use of operating an airport and the associated public aviation safety concerns. The Port of Portland's land management objectives for the remainder of the PDX Intermediate Zone are similar and land uses in this area are intended to be compatible with aviation public safety. Throughout the PDX Intermediate Zone, wildlife management is critical to airport safety and the Port of Portland designs and implements its Federal Aviation Administration approved wildlife hazard management plan with the objective of eliminating or reducing to the extent practicable all attractants for wildlife species of aviation concern, including streaked horned larks.

Most of the PDX Intermediate Zone is either developed or paved or is regularly mowed or disced to maintain low, sparse herbaceous cover or bare ground. This regular maintenance to eliminate or reduce aviation wildlife hazards, in accordance with the wildlife hazard management plan, promotes conditions consistent with suitable streaked horned lark habitat. Most of the undeveloped upland portions of the PDX Intermediate

Zone have the potential to be used by streaked horned larks, although the specific extent of currently suitable streaked horned lark habitat within the PDX Intermediate Zone is unknown.

The SW Quad is an approximately 204.7-acre open field within the PDX Intermediate Zone and immediately adjacent to PDX runways and taxiways. For this reason, the SW Quad is an optimal location for future PDX airport infrastructure. The SW Quad is also bordered by paved roads, other PDX commercial buildings, and open space lands associated with the Riverside Country Club and the Broadmoor Golf Course. Historically, the SW Quad contained extensive wetlands. However, the Port of Portland filled these wetlands (in accordance with applicable regulations) between 1994 and 2005 and installed a perforated pipe drainfield to prevent the recurrence of wetland habitat attractive to wildlife species of concern to aviation safety. The SW Quad is currently an open expanse of mostly barren fill material with sparse herbaceous weedy plants. Much of the SW Quad is mowed or disced annually to deter and discourage avian species of concern to aviation safety from the airfield and surrounding properties and to reduce the risk of wildlife/aircraft collisions; however, this management inadvertently created and currently maintains suitable streaked horned lark habitat. Of the 204.7 acres at the SW Quad, approximately 77 acres are considered suitable habitat for the streaked horned lark. This site is anticipated to be developed about 20 or more years from now.

Sandy Island is located in the Columbia River at River Mile 75.8, directly across from the public boat ramp at the Port of Kalama in unincorporated Columbia County, Oregon. Sandy Island is composed of approximately 340 acres. Approximately 312 acres of Sandy Island is human-made by historic and current dredged material placement.

This portion of the island is owned by the Oregon Department of State Lands (DSL).

The original island landform is approximately 28 acres and is in private ownership.

Because Sandy Island is within waters of the state, DSL regulates the natural resources of the island. Sandy Island is open to the public and accessible by boat.

The proposed Sandy Island Conservation Area consists of piled dredged sand with a relatively flat, sparsely vegetated plateau. The plateau is perched 40 to 50 feet above the shoreline and includes a small grove of approximately 20 black cottonwood (*Populus trichocarpa*) trees and a small depression along the northern portion of the site.

Vegetation is partly sparse and the land cover is a mosaic of bare sand, grasses, forbs, invasive Scot's broom (*Cytisus scoparius*) shrubs, mosses, and lichens, but also transitions abruptly to forested wetlands and riparian habitat. The repeated placement of dredged material at the proposed Sandy Island Conservation Area, with the most recent depositions occurring between 1997 and 2011, created habitat for the streaked horned lark that has been occupied by three to five nesting pairs in recent years.

No additional dredged material placement is anticipated, as this site is considered to be full. Without recurring site disturbance and/or vegetation management, natural succession of the vegetation will degrade existing streaked horned lark habitat and is expected to cause the loss of suitable habitat at this site in the near future. The 32.0 acres of the proposed Sandy Island Conservation Area is designated critical habitat for the streaked horned lark.

Proposed mitigation measures consist of the Port of Portland refraining from conducting vegetation management within Rivergate, the SW Quad, and the proposed Sandy Island Conservation Area during the streaked horned lark nesting season (April 1

to August 31) to avoid directly killing or wounding individuals or causing nest abandonment. Interim conservation measures consist of the reinstatement or continuation of occasional mowing or disking at Rivergate, and continued implementation of similar activities at SW Quad for existing streaked horned lark habitat. The Port of Portland will also continue to mow roadside perimeters and will maintain Jersey barriers currently in place as an interim conservation measure at Rivergate to prevent unwarranted site access and to reduce the risk of fire. These activities satisfy the Port of Portland's needs to properly maintain its properties, but incidentally benefit the streaked horned lark by maintaining the characteristics of suitable habitat at Rivergate and the SW Quad until development occurs. The conservation benefit of this routine site management allows Rivergate and the SW Quad to maintain more habitat for use by streaked horned larks over the duration of the incidental take permit than would likely be achieved in the absence of these activities.

The Port of Portland will enter into a 30-year term conservation easement on the Sandy Island Conservation Area with DSL. Immediately following the issuance of the incidental take permit, the Port of Portland will provide for the protection, management, and monitoring of approximately 32 acres of currently suitable and restorable streaked horned lark habitat at the proposed Sandy Island Conservation Area to maintain and attract additional nesting streaked horned larks as added mitigation for the impacts of the requested incidental taking of streaked horned larks.

National Environmental Policy Act Compliance

The proposed issuance of a section 10(a)(1)(B) permit under the Act is a Federal

action that triggers the need for compliance with NEPA. We have prepared a draft EA to analyze the environmental impacts of two alternatives related to the issuance of a permit and implementation of the conservation program under the proposed HCP. The two alternatives are the No Action alternative and the proposed action (see Proposed Action described above). We also considered several other alternatives that are briefly described in the draft EA but dismissed them from detailed analysis for the reasons describe in the draft EA.

Under the No Action alternative, an incidental take permit would not be issued by the Service, and the Port of Portland's proposed HCP would not be approved. Any incidental take outside the 4(d) Special Rule exemption would not be authorized and the Port of Portland would assume all legal risks for unauthorized take without an incidental take permit.

Under the No Action Alternative, the Port of Portland would not use the project areas in a way that would result in the incidental taking of streaked horned larks outside activities covered under the 4(d) Special Rule Exemption. The Port of Portland has unintentionally created suitable streaked horned lark habitat within the Project Areas. The Port of Portland would cease active site management contributing to the creation of suitable streaked horned lark habitat, and allow the Project Areas to naturally transition out of suitable habitat as vegetation increases in density and height. Once streaked horned larks no longer breed on site at Rivergate, and streaked horned larks do not occupy the area, the Port of Portland would move forward in developing the parcels. The Port of Portland would continue to rely on the authority of the 4(d) Special Rule to continue aviation wildlife hazard management activities on SW Quad, likely changing the

type of management strategies to those that do not favor the creation or maintenance of streaked horned lark habitat. It is expected that streaked horned larks would leave the site before development of the SW Quad occurs. The Port of Portland would not establish the Sandy Island Conservation Area to provide conservation benefits to streaked horned larks. Without active site management to maintain and improve suitable streaked horned lark habitat at this site, increasing levels of encroaching vegetation would naturally transition out of suitable and occupied habitat.

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on our proposed Federal action.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will

be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation, will be available for public inspection by appointment, during normal business hours, at our Oregon Fish and Wildlife Office (see **ADDRESSES**).

Next Steps

After considering public comments, we will make a decision regarding whether the proposed HCP and draft EA meet the requirements of section 10(a)(1)(B) of the ESA and the requirements of NEPA. We will not make a final decision on our proposed action until after the end of the 45-day public comment period on this notice, and we will fully consider all comments we receive during the public comment period. If we determine that all the requirements are met, we would issue the incidental take permit under the authority of section 10(a)(1)(B) of the ESA and sign a finding of no significant impact following the requirements of NEPA.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. §§ 1531 *et seq.*), and NEPA (42 U.S.C. §§ 4321 *et seq.*) and their implementing regulations (50 CFR 17.32, and 40 CFR 1506.6, respectively).

**Theresa Rabot,
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Pacific Region, U.S. Fish and Wildlife Service,
Portland, Oregon.**

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